

E-filing

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12 Attorneys for AXIS IMEX, INC.

13 UNITED STATES DISTRICT COURT

14 NORTHERN DISTRICT OF CALIFORNIA - SAN FRANCISCO

15 AXIS IMEX, INC.,

16 Plaintiff,

17 vs.

18 SUNSET BAY RATTAN, INC., BLAIR
 19 RUBEL, and DOES 1 through 20, inclusive,

20 Defendants.

21 Case No.:

22 **C08-03931**

23 COMPLAINT FOR UNFAIR
 24 COMPETITION, TRADEMARK
 25 INFRINGEMENT, INFRINGEMENT OF
 26 TRADE DRESS, FALSE ADVERTISING,
 27 DILUTION, BREACH OF CONTRACT,
 28 BREACH OF THE COVENANT OF GOOD
 29 FAITH AND FAIR DEALING,
 30 MISAPPROPRIATION OF TRADE
 31 SECRETS, AND INTENTIONAL
 32 INTERFERENCE WITH PROSPECTIVE
 33 ECONOMIC ADVANTAGE

34 Plaintiff, Axis Imex, Inc. alleges:

35 1. **Jurisdiction.** This court has subject matter jurisdiction over this matter under 15
 36 U.S.C. § 1121 and § 1125(d) and 28 U.S.C. §§ 1331 and 1338 (a) and (b). This civil action
 37 includes counts for infringement of trademark and dilution under section 43(a) of the Lanham
 38 Act. This action also includes counts for related claims of breach of contract, trade dress
 39 infringement, misappropriation of trade secrets, unfair competition, and intentional interference
 40 with prospective economic advantage. This court has supplemental jurisdiction over this matter
 41 pursuant to 28 U.S.C. § 1367(a) as to the breach of contract, misappropriation of trade secrets,
 42 unfair competition, and intentional interference with prospective economic advantage claims

43 1
 44 COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,
 45 INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF
 46 CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,
 47 MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W
 48 CASE NO.:

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1 that are related to foregoing claims in the action within the court's original jurisdiction, since
2 they form part of the same case or controversy under Article III of the United States
3 Constitution.

4 2. **Venue.** Venue is proper in the Northern District of California pursuant to 28
5 U.S.C. § 1391(b) and (c).

3. Plaintiff demands a jury trial. Fed. R. Civ. Pro. § 38(b); Federal CRC 3-6.

7 4. **General Allegations.** Since at least 2002, Plaintiff, Axis Imex, Inc., a
8 corporation duly organized and existing under the laws of the State of California ("Plaintiff")
9 has used, the federally registered trademark "STORAGE SENSE" in connection with the
10 production, sale, and distribution of decorative storage containers ("Plaintiff's Trademark").

11 5. Defendant Blair Rubel ("Rubel") is and was an individual residing in New York
12 City, New York.

13 6. Defendant Sunset Bay Rattan, Inc. ("Sunset Bay") is and was a corporation duly
14 organized under the laws of the State of New York, doing business under the name and mark
15 "Andrea Baskets," and having a principal headquarters in Suffolk County, New York.

16 7. Plaintiff is a renowned leader in the decorative storage container industry and has
17 gained national recognition in the mark STORAGE SENSE. As a result, Plaintiff's mark has
18 earned valuable goodwill.

19 8. As a result of Plaintiff's substantial advertising and promotional efforts for
20 Plaintiff's goods and services, as well as its dedication to providing quality services, Plaintiff's
21 marks are widely and favorably recognized and relied upon by the relevant trade and consuming
22 public as indicating high quality goods and services originating exclusively from Plaintiff. Due
23 to such efforts, Plaintiff's Trademark has earned valuable goodwill.

24 9. In order to protect the extensive goodwill symbolized by Plaintiff's trademark, on
25 February 27, 2007, Plaintiff obtained a federal registration for its mark STORAGE SENSE in
26 connection with, among other items, "decorative storage containers" (U.S. Reg. No. 3,212,252).

1 10. Among the items produced and distributed nationwide under Plaintiff's
2 STORAGE SENSE mark are a set of five nesting boxes that coordinate in style with other items
3 in Plaintiff's line of storage wares.

4 11. Plaintiff has continuously used a distinctive trade dress consisting of a
5 combination of features, including the 5-nesting box feature, color matching scheme between
6 the boxes and the ribbons, and the shape, size and placement of the bows and ribbons to
7 distinguish its products.

8 12. This arrangement and overall image and the like is of such an unusual design that
9 a customer would immediately rely on it to differentiate the source of the services. Moreover,
10 the arrangement and overall image and the like have been used in interstate and intrastate
11 commerce and in connection with the advertising, promotion, offering, and provision of its
12 products and services consistently and continuously by Plaintiff.

13 13. Plaintiff has offered its products under its unique trademark STORAGE SENSE
14 and trade dress, and such trademark and trade dress have continuously appeared in Plaintiff's
15 advertising and promotional activities. Plaintiff has extensively used and promoted the
16 trademarks and trade dress such that they are closely identified with the products of STORAGE
17 SENSE and have gained widespread public recognition.

18 14. Plaintiff's trademark and trade dress have received widespread public recognition
19 throughout the United States. Plaintiff's trademark and trade dress have been promoted and
20 featured in many significant national Federated Department Stores such as Bed, Bath & Beyond,
21 and Mervyn's and at other national chain stores including Michael's Arts and Crafts.

22 15. Plaintiff's trademark and trade dress are valid and subsisting and are evidence of
23 Plaintiff's exclusive right to use said trademarks and trade dress in commerce throughout the
24 United States for decorative storage containers and other goods related thereto.

25 16. Due to the care and skill employed by Plaintiff in the conduct of its business, the
26 high quality of the products offered under its trademark and trade dress, and the unique nature of

28 COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,
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MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W
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1 the trademarks and trade dress and the extensive advertising, sale and promotion of Plaintiff's
 2 products, the trademarks and trade dress are either inherently distinctive or have acquired strong
 3 secondary meaning. The trademark and trade dress identify Plaintiff's popular products as those
 4 of Plaintiff exclusively, and distinguish them from the products of others. The distinct
 5 trademarks and trade dress are well known and symbolize the goodwill that Plaintiff has created
 6 by its offering of its products.

7 **FIRST COUNT**

8 **Unfair Competition**
 9 **(Against All Defendants)**

10 17. Plaintiff realleges and incorporates by reference each and every allegation
 11 contained in paragraphs 1 through 16 of the Complaint with the same force and effect as if fully
 12 set forth at length herein.

13 18. Plaintiff hired Rubel as an independent contractor on or about October 2, 2005.
 14 Rubel was retained to present and sell Axis Imex's products to various Federated Department
 15 Stores.

16 19. On October 2, 2005, Rubel and Plaintiff entered into an Agent Representative
 17 Agreement ("Agreement") whereby Rubel agreed to keep information he learned in the course
 18 of his employment confidential and not to disclose confidential information to Axis Imex
 19 competitors for a period of six months after termination of his employment.

20 20. During the course of his employment, Rubel learned confidential information
 21 about Axis Imex, including proprietary information about their nesting boxes and other goods,
 22 and worked with Axis Imex and manufacturers including a Hong Kong based company,
 23 MultiTarget International Ltd. ("MultiTarget") to refine the production of those goods.

24 21. Axis Imex terminated Rubel's services in or about December 2005.

25 22. On information and belief, shortly after Rubel's services were terminated by Axis
 26 Imex, Rubel approached Waverly Fabrics (Plaintiff's fabric supplier for its nesting boxes and

1 other trademarked goods) regarding the prospect of starting a China-to-China business
2 association similar to the one that Axis has with Waverly. Waverly declined Rubel's request.

3 23. On information and belief, Rubel thereafter began working with a new company,
4 Defendant Sunset Bay, which was manufacturing decorative storage containers under the mark
5 ANDREA BASKETS. Certain features of Andrea Baskets boxes resembled Plaintiff's products,
6 namely the five nesting box feature, color matching scheme between the boxes and the ribbons,
7 and the shape, size and placement of the bows and ribbons.

8 24. On information and belief, since Sunset Bay began producing its version of Axis
9 Imex's nesting boxes, it has had them manufactured by MultiTarget.

10 25. Sunset Bay's version of the five nesting box is very similar in appearance to
11 Plaintiff's nesting box design, but Sunset Bay's design includes numerous inferior elements.
12 The Sunset Bay boxes are not finished as well, resulting in sloppy seams and folds, uneven and
13 poorly affixed paper interiors, and bows which are tied in a messy and unprofessional manner.
14 Sunset Bay uses a lighter gauge of cardboard for its boxes, which results in a lighter overall
15 product which feels less sturdy and which may warp or twist during the manufacturing phase
16 due to application of glue to affix fabric and paper adornment. The resulting impression is that
17 whereas Plaintiff's boxes are finely and carefully finished and are of good quality, Sunset Bay's
18 boxes are a cheaper version.

19 26. In or about May 2008, Plaintiff was informed by Dorothy Ho of MultiTarget that
20 one of the orders shipped to Plaintiff's customer, HomeGoods, in or about October 2007,
21 included Sunset Bay products created for the ANDREA BASKETS mark, but which bore
22 STORAGE SENSE hangtags. On information and belief, Dorothy Ho informed Sunset Bay
23 about the incident, but Sunset Bay made no effort to recall the product or take other corrective
24 action, and the Sunset Bay product was sold under the STORAGE SENSE mark.

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COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF
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MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W
CASE NO. :

1 27. Upon learning of Rubel's violation of the non-disclosure agreement, Sunset Bay's
2 infringement of Plaintiff's trade dress and its inaction to correct the actions of Multi Target,
3 Plaintiff sent a cease and desist letter to both defendants on August 14, 2008.

4 28. The use by Sunset Bay of such colorable imitations of Plaintiff's trade dress is
5 likely to cause confusion, mistake, or deception to members of the consuming public.
6 Consumers may mistakenly believe that said products were connected with Plaintiff's
7 STORAGE SENSE trademark and trade dress, when in fact they are not.

8 29. Plaintiff has invested substantial time, skill and money in developing its property,
9 which includes its trademark and trade dress.

10 30. Defendants appropriated and used Plaintiff's trade dress at little or no cost to
11 Defendants.

12 31. On information and belief, Defendants have knowingly permitted their imitation
13 goods to be sold under Plaintiff's Trademark.

14 32. Defendants' use of Plaintiff's trade dress was without the authorization or consent
15 of Plaintiff.

16 33. Plaintiff has been injured by Defendants' conduct because Defendants' use of
17 Plaintiff's trade dress to create inferior products has interfered with Plaintiff's ability to market
18 its STORAGE SENSE products. This in turn has had the effect of reducing, or eliminating
19 Plaintiff's profits.

20 34. As a direct and proximate result of the foregoing, Plaintiff has sustained
21 damages, the exact amount of which is not yet known to Plaintiff but which exceeds the
22 minimum jurisdiction of this court.

23 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

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COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,
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CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W
CASE NO.:

SECOND COUNT**Trademark Infringement
(Against Sunset Bay and Does 1 Through 20, Inclusive)**

35. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 34 of the Complaint with the same force and effect as if fully set forth at length herein.

36. STORAGE SENSE mark which Defendants affixed to their nesting boxes was identical to the federally registered mark belonging to Plaintiff.

37. On information and belief, Defendants profited from the sale of product bearing the identical mark to Plaintiff's federally registered mark.

38. The unlicensed use of Plaintiff's trademark, or any colorable variation of it by the Defendants, is likely to cause mistake or confusion or deception in the minds of the public and constitute an infringement of Plaintiff's United States Registration No. 3,212,252.

39. Because Plaintiff has no control over the nature of Defendants' unlicensed use of its mark, Plaintiff is and will be damaged by Defendants' unauthorized use of its mark.

40. The infringement charged above is knowing and willful.

WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

THIRD COUNT**Trade Dress
(Against All Defendants)**

41. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 34 of the Complaint with the same force and effect as if fully set forth at length herein.

42. Upon information and belief, Rubel and Sunset Bay have performed the aforesaid acts with fraudulent purpose and knowledge to inappropriately trade upon Plaintiff's

1 extensive goodwill, including using Plaintiff's trademarks and trade dress to draw customers to
2 purchase their products and unlawfully profit.

3 43. Plaintiff's trade dress and marks are wholly associated with STORAGE SENSE
4 due to their longstanding use, and as such Plaintiff is entitled to have its trade dress and marks
5 adequately protected with respect to the conduct of its business.

6 44. By the aforesaid acts, Defendants have infringed upon Plaintiff's federal
7 trademark rights in its trade dress described above in violation of Section 32 of the Lanham Act,
8 15 U.S.C. § 1125(a).

9 45. Defendants' acts have been willful and in conscious disregard of the trade dress
10 rights of Plaintiff.

11 46. As a direct and proximate result of Defendants' actions, Plaintiff has been
12 damaged, the exact amount of which is not yet known to Plaintiff but which exceeds the
13 minimum jurisdiction of this court.

14 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

FOURTH COUNT

False Advertising
(Against Sunset Bay and Does 1 through 20, inclusive)

18 47. Plaintiff realleges and incorporates by reference each and every allegation
19 contained in paragraphs 1 through 26 of the Complaint with the same force and effect as if fully
20 set forth at length herein.

21 48. On information and belief, Sunset Bay made a false representation about the
22 origin of its nesting boxes by permitting them to be sold under Plaintiff's STORAGE SENSE
23 mark.

24 49. On information and belief, Sunset Bay's goods bearing Plaintiff's Trademark
25 were sold to the consuming public through retail establishments.

1 50. On information and belief, the sale of Sunset Bay's goods bearing Plaintiff's
2 Trademark benefited Sunset Bay and did material damage to Plaintiff, in that it caused
3 consumers to associate Sunset Bay's inferior nesting box product with Plaintiff's Trademark.

4 51. Any continuation or repetition of this behavior will further damage Plaintiff and
5 the goodwill associated with its STORAGE SENSE mark.

6 WHEREFORE, Plaintiff prays for judgment as hereinafter set forth.

FIFTH COUNT

Dilution
(Against Sunset Bay and Does 1 through 20, inclusive)

10 52. Plaintiff realleges and incorporates by reference each and every allegation
11 contained in paragraphs 1 through 51 of the Complaint with the same force and effect as if fully
12 set forth at length herein.

13 53. Plaintiff has offered its products under its unique trademark STORAGE SENSE
14 and trade dress, and such trademarks and trade dress have continuously appeared in Plaintiff's
15 advertising and promotional activities. Plaintiff has extensively used and promoted the
16 trademarks and trade dress such that they are closely identified with the products of STORAGE
17 SENSE and have gained widespread public recognition.

18 54. Plaintiff's trademark and trade dress have received widespread public recognition
19 throughout the United States. Plaintiff's trademark and trade dress have been promoted and
20 featured in many significant national chain stores including HomeGoods, Marshall's, TJ Maxx,
21 Ross Stores, Tuesday Morning, and others.

22 55. Plaintiff has made use of STORAGE SENSE as a trademark and has used its
23 aforementioned trade dress in connection with goods sold and transported in interstate
24 commerce.

25 56. Plaintiff's mark and trade dress are strong and distinctive and have become
26 famous and are evidence of Plaintiff's exclusive right to use said trademarks and trade dress in

1 commerce throughout the United States for decorative storage containers and other goods
2 related thereto.

3 57. Sunset Bay's acts were commenced after Plaintiff's mark became famous.

4 58. Sunset Bay has made use of Plaintiff's trade dress in connection with goods it has
5 sold under the name "Andrea Baskets" and transported in United States interstate commerce.

6 59. Sunset Bay's use of Plaintiff's trade dress creates a likelihood of association with
7 Plaintiff's famous mark STORAGE SENSE arising from the nearly exact identity in appearance
8 of Defendant's inferior products.

9 60. Defendant's acts are in violation of Lanham Act § 43(c) in that they are likely to
10 cause dilution by blurring by impairing the distinctiveness of Plaintiff's famous mark to the
11 detriment of Plaintiff.

12 61. Defendant's acts are in violation of Lanham Act § 43(c) in that they are likely to
13 cause dilution by tarnishment of the reputation of Plaintiff's famous mark to the detriment of
14 Plaintiff.

15 62. Defendant committed these acts willfully with the intent to create an association
16 with Plaintiff's famous marks. Defendant further willfully intended to trade on the recognition
17 of Plaintiff's famous marks and to harm the reputation of the famous marks.

18 63. As a direct and proximate result of Defendants' actions, Plaintiff has been
19 damaged, the exact amount of which is not yet known to Plaintiff but which exceeds the
20 minimum jurisdiction of this court.

21 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

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28 COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF
CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W
CASE NO.: 8/18/08 (25409) #313994.1

SIXTH COUNT

Breach of Contract (Against Blair Rubel)

4 64. Plaintiff realleges and incorporates by reference each and every allegation
5 contained in paragraphs 1 through 26 of the Complaint with the same force and effect as if fully
5 set forth at length herein.

7 65. Pursuant to the last paragraph of the Agreement entered into by Plaintiff and
8 Rubel on October 2, 2005, Rubel agreed not to disclose any confidential information about
9 Plaintiff to any competitors, prospects or customers for a period of six months after termination
10 of the agreement. Rubel also agreed not to disclose any confidential information, trade secrets,
11 designs, and or various manufacture contacts for all products currently being sold by Plaintiff in
12 addition to any sample products developed by Rubel on behalf of Plaintiff. See Exhibit A

13 66. Upon information and belief, less than six months after Rubel's employment with
14 Axis Imex terminated, he began working with Sunset Bay, which was manufacturing decorative
15 storage containers under the name ANDREA BASKETS.

16 67. On information and belief, Rubel disclosed confidential and proprietary
17 information which he was contractually bound to keep confidential to Sunset Bay, including the
18 method of manufacture of Plaintiff's nesting boxes, its manufacturers and distributors, and how
19 to achieve elements of its trade dress.

20 68. Plaintiff has complied with all of its obligations under the Agreements it has with
21 Rubel and all conditions of Rubel's obligations under the agreements have occurred or been
22 waived.

23 69. As a direct and proximate result of Rubel's wrongful disclosure, Plaintiff has
24 been greatly damaged.

WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

SEVENTH COUNT

Breach of the Covenant of Good Faith and Fair Dealing (Against Blair Rubel)

70. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 26 and 64 through 69 of the Complaint with the same force and effect as if fully set forth at length herein.

71. Under the terms of the Agreement, Rubel owed to Plaintiff an implied duty of good faith and fair dealing in his relationship with Plaintiff for the presentation and sale of Plaintiff's STORAGE SENSE products.

72. Under the terms of the Agreement, Rubel also owed to Plaintiff an implied duty of good faith and fair dealing as to his transition out of his business relationship with Plaintiff for a period of six months after the termination of the Agreement.

73. Rubel has breached his duty of good faith and fair dealing by disclosing Plaintiff's confidential information to Sunset Bay and possibly others.

74. Rubel has also breached his duty of good faith and fair dealing by disclosing Plaintiff's manufacture contacts, specifically Waverly and Multi Target to Sunset Bay and possibly others.

75. As a direct and proximate result of Rubel's breaches, Plaintiff has been damaged, the exact amount of which is not yet known to Plaintiff but which exceeds the minimum jurisdiction of this court.

WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

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**COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF
CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W
CASE NO.:**

EIGHTH COUNT

Misappropriation of Trade Secrets (Against All Defendants)

76. Plaintiff realleges and incorporates by reference each and every allegation contained in paragraphs 1 through 75 of the Complaint with the same force and effect as if fully set forth at length herein.

7 77. Plaintiff was in possession of trade secret information consisting of its secret
8 design, pattern and technique for assembly of its STORAGE SENSE decorative storage boxes.

9 78. Plaintiff's secret design, pattern and technique for assembly of its STORAGE
10 SENSE decorative storage boxes had economic value in that its use resulted in the creation of a
11 unique decorative storage box with exceptional quality. Plaintiff made reasonable efforts to
12 insure that the secret design, pattern and technique for assembly of its STORAGE SENSE
13 decorative storage boxes remained a secret by entering into the non-disclosure Agreement with
14 Rubel, and generally keeping its design, pattern and technique for assembly of its STORAGE
15 SENSE decorative storage boxes secret and unavailable to others.

16 79. On information and belief, in early 2006, Defendants Rubel and Sunset Bay
17 misappropriated the above-described trade secret of Plaintiff by using Plaintiff's secret design,
18 pattern and technique for assembly of its STORAGE SENSE decorative storage boxes to be
19 sold under the name ANDREA BASKETS.

20 80. Rubel acquired knowledge of Plaintiff's trade secret under circumstances giving
21 rise to a duty to maintain its secrecy or limit its use since he was an independent contractor of
22 Plaintiff and based on his Agreement with Plaintiff, and Sunset Bay derived its knowledge of
23 Plaintiff's trade secret from Rubel who owed a duty to Plaintiff

24 81. As a proximate result of the use by Defendants Rubel and Sunset Bay of
25 Plaintiff's secret design, pattern and technique for assembly of its STORAGE SENSE decorative
26 storage boxes. Plaintiff has suffered actual damages. As a further proximate result of the

1 misappropriation, Sunset Bay was unjustly enriched by obtaining contracts to sell its goods to
2 major retail stores.

3 82. Plaintiff is informed and believes and thereon alleges that the aforementioned
4 acts of the defendant were willful and malicious in that Defendants misappropriated Plaintiff's
5 secret design, pattern and technique for assembly of its STORAGE SENSE decorative storage
6 boxes with the deliberate intent to injure Plaintiff's business and improve its own. Plaintiff is
7 therefore entitled to punitive damages. Plaintiff is also entitled to reasonable attorney's fees.

8 WHEREFORE, Plaintiff pray for judgment as hereinafter set forth.

NINTH COUNT

Intentional Interference With Prospective Economic Relationship (Against All Defendants)

12 83. Plaintiff realleges and incorporates by reference each and every allegation
13 contained in paragraphs 1 through 82 of the Complaint with the same force and effect as if fully
14 set forth at length herein.

15 84. Between 2000 and the present, Plaintiff enjoyed a commercial relationship with
16 HomeGoods, a subsidiary of TJX Companies. Between 2000 and 2007, Plaintiff sold in excess
17 of \$14,000,000.00 worth of goods to HomeGoods, including Plaintiff's nesting boxes and other
18 decorative storage items designed to coordinate with the nesting boxes. In 2008, Plaintiff and
19 HomeGooods were due to discuss further sales by Plaintiff to HomeGoods for the year.

20 85. Defendants knew of the above described relationship existing between Plaintiff
21 and HomeGoods. Rubel was aware of the volume of sales that Plaintiff had achieved to
22 HomeGoods in 2005 and the positive relationship that Plaintiff enjoyed with HomeGoods
23 buyers.

24 86. On information and belief, Defendants intentionally targeted HomeGoods as a
25 buyer of Sunset Bay's inferior, competing product, based on confidential knowledge of
26 HomeGoods buyers' interest in Plaintiff's product and sought to displace Plaintiff first by

1 undercutting Plaintiff on pricing and later by permitting Sunset Bay's inferior products to be
2 sold under Plaintiff's STORAGE SENSE mark, leading to a customer perception that Plaintiff's
3 products had decreased in quality and durability and were no longer desirable.

4 87. Defendants' misconduct as alleged in paragraph 79, above, constituted an unfair
5 trade practice in violation of Business and Professions Code Section 17200.

6 88. In 2008, HomeGoods has decreased its orders from Plaintiff by more than 80%,
7 citing decreased customer interest in Plaintiff's products. HomeGoods has continued to stock
8 ANDREA BASKETS marked products.

9 89. As a direct and proximate result of Defendants' conduct, Plaintiff has suffered
10 great damage and will continue to suffer damage in the future if it cannot revive its relationship
11 with HomeGoods and other retailers.

12 90. The aforementioned acts of Defendants, and each of them, were willful,
13 oppressive, fraudulent and malicious. Plaintiff is therefore entitled to punitive damages.

14 WHEREFORE, plaintiff prays for judgment against Defendants as follows:

15 1. For damages, including but not limited to a disgorgement of profits, in an amount
16 to be proven at trial.

17 2. For exemplary and punitive damages, based on Defendants' intentionally
18 wrongful conduct.

19 3. For an order requiring Defendants, and each of them, to show cause, if any they
20 have, why they should not be enjoined as set forth below, during the pendency of this action;

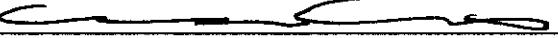
21 4. For a temporary restraining order, a preliminary injunction, and a permanent
22 injunction, all enjoining Defendants from continuing to sell their infringing product, from
23 labeling any of their goods with the STORAGE SENSE mark or with any other indicia
24 associated with or confusingly similar to Plaintiff's marks or dress in any of its goods, and from
25 disclosing information about Plaintiff's goods and business to third parties.

26 5. For costs incurred; and

1 6. For any other and further relief as the court may deem proper.
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3 Dated: August 18, 2008

FITZGERALD ABBOTT & BEARDSLEY LLP

4 By 
5 William E. Adams
6 Attorneys for AXIS IMEX, INC.

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28 COMPLAINT FOR UNFAIR COMPETITION, TRADEMARK INFRINGEMENT,
INFRINGEMENT OF TRADE DRESS, FALSE ADVERTISING, DILUTION, BREACH OF
CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING,
MISAPPROPRIATION OF TRADE SECRETS, AND INTENTIONAL INTERFERENCE W
CASE NO.:
8/18/08 (25409) #313994.1

The JS 44 civil cover sheet and the information contained in neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON PAGE TWO OF THE FORM.)

I. (a) PLAINTIFFS

AXIS IMEX, INC.

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

William Adams, David C. Lee, Dawn Newton
Fitzgerald Abbott & Beardsley, LLP
1221 Broadway, 21st Floor
Oakland, CA 94612
(510) 451-3300

DEFENDANTS

SUNSET BAY RATTAN, INC., BLAIR RUBEL, and DOES 1 through 20 inclusive

ADR ECF

(c) Attorney's (Firm Name, Address, and Telephone Number)

County of Residence of First Listed Defendant

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF	
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
110 Insurance	PERSONAL INJURY	PERSONAL INJURY	610 Agriculture	400 State Reapportionment
120 Marine	310 Airplane	362 Personal Injury—Med. Malpractice	620 Other Food & Drug	410 Antitrust
130 Miller Act	315 Airplane Product Liability	365 Personal Injury — Product Liability	625 Drug Related Seizure of Property 21 USC 881	430 Banks and Banking
140 Negotiable Instrument	320 Assault, Libel & Slander	368 Asbestos Personal Injury Product Liability	630 Liquor Laws	450 Commerce
150 Recovery of Overpayment & Enforcement of Judgment	330 Federal Employers' Liability	370 Other Fraud	640 R.R. & Truck	460 Deportation
151 Medicare Act	340 Marine	371 Truth in Lending	650 Airline Regs.	470 Racketeer Influenced and Corrupt Organizations
152 Recovery of Defaulted Student Loans (Excl. Veterans)	345 Marine Product Liability	380 Other Personal Property Damage	660 Occupational Safety/Health	480 Consumer Credit
153 Recovery of Overpayment of Veteran's Benefits	350 Motor Vehicle	385 Property Damage Product Liability	690 Other	490 Cable/Sat TV
160 Stockholders' Suits	355 Motor Vehicle Product Liability			510 Selective Service
190 Other Contract	360 Other Personal Injury			850 Securities/Commodities/ Exchange
195 Contract Product Liability			710 Fair Labor Standards Act	875 Customer Challenge 12 USC 3410
196 Franchise			720 Labor/Mgmt. Relations	890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	730 Labor/Mgmt. Reporting & Disclosure Act	891 Agricultural Acts
210 Land Condemnation	441 Voting	510 Motions to Vacate Sentence	740 Railway Labor Act	892 Economic Stabilization Act
220 Foreclosure	442 Employment	Habeas Corpus: Accommodations	790 Other Labor Litigation	893 Environmental Matters
230 Rent Lease & Ejectment	443 Housing/ Accommodations	530 General	791 Empl. Ret. Inc. Security Act	894 Energy Allocation Act
240 Torts to Land	444 Welfare	535 Death Penalty		895 Freedom of Information Act
245 Tort Product Liability	445 Amer. w/ Disabilities - Employment	540 Mandamus & Other		900 Appeal of Fee Determination
290 All Other Real Property	446 Amer. w/ Disabilities - Other	550 Civil Rights	870 Taxes (U.S. Plaintiff or Defendant)	Under Equal Access to Justice
	440 Other Civil Rights	555 Prison Condition	871 IRS—Third Party 26 USC 7609	950 Constitutionality of State Statutes
IMMIGRATION				
			462 Naturalization Application	
			463 Habeas Corpus — Alien Detainee	
			465 Other Immigration Actions	

V. ORIGIN

(Place an "X" in One Box Only)

1 Original Proceeding

2 Removed from State Court

3 Remanded from Appellate Court

4 Reinstated or Reopened

Transferred from

5 another district
(specify)

6 Multidistrict Litigation

7 Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

15 USC 1121, 1125(d); 28 USC 1331, 1338(a) and (b); Lanham Act section 43(a)

Brief description of cause:

Unfair competition, infringement of trade dress, false advertising, dilution, misappropriation of trade secrets,

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION
UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:
JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

PLEASE REFER TO CIVIL L.R. 3-12 CONCERNING REQUIREMENT TO FILE
"NOTICE OF RELATED CASE".

IX. DIVISIONAL ASSIGNMENT (CIVIL L.R. 3-2) (PLACE AND "X" IN ONE BOX ONLY)

SAN FRANCISCO/OAKLAND

SAN JOSE

DATE

SIGNATURE OF ATTORNEY OF RECORD

August 18, 2008

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.